

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TRICORE, INC.	:	CIVIL ACTION NO.
	:	04-12393 (JGD)
	:	
VS.	:	
	:	
SAFECO INSURANCE COMPANY OF	:	
AMERICA and R.P. IANNUCCILLO &	:	
SONS CONSTRUCTION CO.	:	January 13, 2006

**SUPPLEMENTAL STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF SAFECO INSURANCE COMPANY OF AMERICA'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 56.1, defendant and crossclaim defendant Safeco Insurance Company of America (the "Surety") submits its Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment.

1. The Surety has carefully reviewed the letter (the "RPI Letter"), which accompanied the Opposition Memorandum to the Surety's Motion for Partial Summary Judgment submitted by R.P. Iannuccillo & Sons Construction, Co. ("RPI"). See Supplemental Affidavit of Ira E. Sussman in Support of the Surety's Motion for Partial Summary Judgment ("Supplemental Aff."), ¶¶ 4,7.

2. The RPI Letter was dated September 12, 2003 and was purportedly sent to the Surety in reply to the Surety's request for a response from RPI, which response was to address Tricore Inc.'s bases for termination of the subcontract between Tricore, Inc. and RPI (the "Subcontract"). See id., ¶ 5.

3. Based on the Surety's recent review of the Letter, the Surety would have nevertheless denied RPI's claim under the Tricore payment bond because the RPI Letter

provides additional evidence that a bona fide, good faith dispute existed between Tricore and RPI regarding the Subcontract. See id., ¶ 7.

CROSSCLAIM DEFENDANT,
SAFECO INSURANCE COMPANY
OF AMERICA

BY



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Steiner LLP
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Its Attorneys


CERTIFICATION

This is to certify that on January 13, 2006, a copy of the foregoing was mailed, postage pre-paid or delivered electronically or by facsimile to the following:

Edward Kutchin
Kerry R. Northup
Kutchin & Rufo, PC
155 Federal Street, 17th Floor
Boston, MA 02110-1727
Tricore, Inc.

David M. Campbell
Visconti & Boren, LTD
55 Dorrance Street
Providence, RI 02903
**R. P. Iannuccillo & Sons Construction
Co.**

Bradford R. Carver, Esq.
Jonathan C. Burwood, Esq.
Hinshaw & Culbertson, LLP
One International Place, 3rd Floor
Boston, MA 02110
Safeco Insurance Company of America


Dennis C. Cavanaugh

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SAFECO INSURANCE COMPANY OF	:	
AMERICA and R.P. IANNUCCILLO &	:	
SONS CONSTRUCTION CO.	:	January 12, 2006

**SUPPLEMENTAL AFFIDAVIT IN OF IRA E. SUSSMAN IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

1. I am over the age of eighteen (18) and believe in the obligation of an oath.
2. I am a Surety Claims Representative of Safeco Insurance Company (the "Surety"), a party in the above-captioned matter.
3. I make this Affidavit in support of the Safeco Insurance Company of America's Reply to the Opposition to Motion for Summary Judgment filed by R.P. Iannuccillo & Sons Construction, Co. ("RPI") and based on my own personal knowledge.
4. On January 3, 2006, I received a copy of a letter, which my attorney received as part of RPI's Opposition Memorandum to the Surety's Motion for Partial Summary Judgment (the "RPI Letter").
5. The RPI Letter was dated September 12, 2003 and was purportedly sent to me in reply to my request for a response from RPI, which response was to address Tricore Inc.'s bases for termination of the subcontract between Tricore, Inc. and RPI (the "Subcontract").
6. I have personally undertaken a thorough review of my files to see if I could

locate the RPI Letter. Based on this thorough review, I was unable to locate the RPI Letter.

7. Nevertheless, I have carefully reviewed the RPI Letter since receiving it on January 3, 2006. Based on this review, I believe I would have nevertheless denied RPI's claim because the RPI Letter provides additional evidence that a bona fide, good faith dispute existed between Tricore and RPI regarding the Subcontract.



Ira E. Sussman

STATE OF Illinois)
COUNTY OF Cook) SS.:

On this 12th day of January, 2005 before me personally appeared Ira Sussman to me known and known to me to be the individual described in, and who executed the foregoing instrument, and that he/she has acknowledged to me that he/she has executed the same.

[SEAL]

Adele Gattuso



Notary Public
My commission expires: 7/6/2006